IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

CRP.No. 2505 of 2001()

AGAINST THE ORDER DATED 15/06/2001 IN IA. 3117 /1996 IN OS.292/1996 of MUNSIFF COURT, PERUMBAVOOR

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REVN. PETITIONER:

C.K. GEORGEKUTTY, S/O. KURIAKOSE,
KIZHAKKANA HOUSE,
KUZHIKKAD KARA,
PUTHENCRUZ VILLAGE,
KUNNATHUNADU TALUK.

BY ADV. SRI.R.D.SHENOY
SRI.S.VINOD BHAT

RESPONDENTS:

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1. ELIZEBETH, W/O. CHACKOCHAN,
ALIAS K.C. CHACKAPPAN,
KADATHEKKATTU HOUSE,
KUZHIKKADU KARA,
PUTHENCRUZ VILLAGE,
KUNNATHUNADU TALUK.

2. K.C.CHACKAPPAN,
S/O.CHERIAN, KADATHEKATTU HOUSE,
KUZHIKKAD KARA,
PUTHENCRUZ VILLAGE,
KUNNATHUNADU TALUK.

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P No.2505 of 2001

Dated this the 30th day of January, 2007

JUDGMENT

This is a revision petition preferred against the order of the Munsiff's Court, Perumbavoor in I.A. No.3117/1996 in O.S.292/1996. Heard the learned counsel for the revision petitioner and also perused the order. The learned Munsiff has disposed of the application even without seeing or examining the alleged mentally unsound person. Under Order 32 Rule 15 of the Civil Procedure Code, enquiry is contemplated so as to find out whether a person is by reason of any mental infirmity prevented from protecting his interest when suing or being sued. The document referred to as Ext.A1 states that the defendant was suffering from mental disturbances and psychiatric problems. The court below did not even see the person nor had the opportunity to question him to explain about his mental capacity. Similarly, even without examining the person who had issued Ext.A1, the court has arrived at conclusions. The Courts have to be very careful while adjudicating a person as unsound and it has to satisfy its

conscience that he requires really an appointment of a guardian to look after the person and the property.

2. The approach made by the court below is absolutely erroneous and therefore the order passed by the trial court is liable to be set aside and I do so.

3. In the result, C.R.P is allowed and the order under challenge is set aside and the learned Munsiff is directed to conduct a proper enquiry as contemplated under Order 32 Rule 15 of the Civil Procedure Code to find out the mental capacity and thereafter to consider the question whether a guardian has to be appointed. C.R.P is disposed of accordingly.

(M.N.KRISHNAN, JUDGE)

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